TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD
LSA Document #09-365

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO 329 IAC 3.1 CONCERNING TEMPORARY STORAGE AND MANAGEMENT OF SPENT LEAD ACID BATTERIES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule and amendments to 329 IAC 3.1 concerning temporary storage and management of spent lead acid batteries. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 3, 2009, Indiana Register (20090603-IR-329090365FNA).

CITATIONS AFFECTED: 329 IAC 3.1-11-2; 329 IAC 3.1-11.1.

AUTHORITY: IC 4-22-2; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The proposed rule would provide requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage by retailers, wholesalers, manufacturers, auto salvage yards, and other salvage facilities and reclamation facilities, to prevent releases of contaminants into the environment. Intermittent storage of partially reclaimed spend lead acid batteries is also proposed to be regulated.

IDEM has replaced the adopt by reference format for federal requirements in the existing rule with the full text rule language in this proposed rule. IDEM is adding some basic, common sense management requirements to address issues IDEM inspectors have observed over the years. These issues involve interpretation of existing rules and actual management practices. References to Indiana statutory requirements applicable to spent lead acid battery handlers have also been added to the rule to ensure persons subject to those requirements are aware of them.

IDEM has added definitions and management standards to clarify regulatory and statutory requirements and as necessary to address the new temporary staging requirements. Under the new temporary storage requirements reclaimers will be allowed to stage whole spent lead acid batteries on incoming trailers for up to 14 days on an asphalt or concrete surface maintained in good condition provided the reclaimers comply with basic inspection and maintenance requirements.

IDEM has added a notification requirement in this rule for intermediate storage facilities that accumulate more than 5,000 kilograms of spent lead acid batteries. This requirement is consistent with the notification requirements for large quantity handlers of universal waste (40 CFR 273, Subpart C) under current rules.

Language has been added to clarify closure and corrective action requirements for permitted and unpermitted storage areas.

Requirements for transporters of spent lead acid batteries are also being clarified under this proposal.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. IDEM is clarifying and fleshing out applicable federal regulations: 40 CFR 266; Sections 3006 and 3009 of RCRA and 40 CFR 271.

Potential Fiscal Impact

IDEM contacted one of the two facilities reclaiming spent lead acid batteries in the state regarding the potential fiscal impact of this rulemaking. The contacted facility representative stated that the proposed 14 day staging period would reduce double handling of spent lead acid batteries, which would significantly reduce costs. In addition, the 14 day staging period would significantly reduce, or eliminate, the need to construct additional permit storage capacity, the cost associated therewith, and the costs of permitting and managing, on an ongoing basis, a larger permitted storage area for incoming spent lead acid batteries.

The facility representative would not comment on the estimated cost of proposed management requirements for temporary or intermittent storage areas until the draft language contained in this proposal was available to the facility through this notice.

IDEM estimates that this rulemaking will generally result in insignificant fiscal impact on the regulated entities. The ongoing cost of the proposed management requirements for intermittent storage of spent lead acid batteries will have some fiscal impact on facilities. However, this rulemaking may result in a net savings to battery

reclaimers through the allowance for staging on-site for spent lead acid batteries, which gives the reclaimers more flexibility.

IDEM will not have to hire additional staff for compliance and enforcement purposes and will be able to utilize existing resources.

IDEM invites comment on the potential fiscal impact of this rulemaking.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Kiran Verma, Rules Development Branch, Office of Legal Counsel at (317) 232-8899 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 3, 2009, through July 6, 2009, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language in the draft rule. Mailed comments should be addressed to:

#09-365 (SWMB) (Spent Lead Acid Battery Rule)
Janet Pittman
Rules Development Branch
Office of Legal Counsel, MC 65-46
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty on the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by December 4, 2009.

Additional information regarding this action may be obtained from Kiran Verma, Rules Development Branch, Office of Legal Counsel (317) 232-8899 or (800) 451-6027 (in Indiana). Technical information regarding this action may be obtained from David Berrey, Office of Land Quality, (317) 308-3341 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 3.1-11-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-11-2 Exceptions and additions; specific standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2; 40 CFR 266

Sec. 2. Exceptions and additions to standards for the management of specific hazardous waste and specific types of hazardous waste facilities are as follows:

(1) Delete 40 CFR 266.23(b) and substitute the following: "No person may apply or allow the application of used oil as defined in 329 IAC 3.1-4 to any ground surface except for purposes of treatment in accordance with a permit issued by the department under IC 13-15-2. The use of unused waste oil or other waste material, which is contaminated with dioxin or hazardous waste or exhibits any characteristic of hazardous waste except ignitability for dust suppression or road treatment is prohibited.".

(2) In 40 CFR 266.102(a)(2)(viii) dealing with applicable financial requirements for burners, the references to federal cites shall be converted as follows:

(A) 264.141 means 329 IAC 3.1-15-2.
(B) 264.142 means 329 IAC 3.1-15-3.
(C) 264.143 means 329 IAC 3.1-15-4.
(D) 264.147 through 264.151 means 329 IAC 3.1-15-8 through 329 IAC 3.1-15-10.

(3) Delete ~~40 CFR 266.80(b)~~ **40 CFR 266, Subpart G** and ~~substitute the following: "Owners or operators of~~

~~facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:~~

~~(A) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.~~

~~(B) All applicable provisions in the following subparts of 40 CFR 264:~~

~~(i) Subpart A through subpart B, excluding 40 CFR 264.13.~~

~~(ii) Subpart C through subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.~~

~~(iii) Subpart F through subpart L.~~

~~(C) All applicable provisions in the following subparts of 40 CFR 265:~~

~~(i) Subpart A through subpart B, excluding 40 CFR 265.13.~~

~~(ii) Subpart C through subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72.~~

~~(iii) Subpart F through subpart L.~~

~~(D) All applicable provisions in 40 CFR 270 and 40 CFR 124.".~~ **insert 329 IAC 3.1-11.1.**

(Solid Waste Management Board; 329 IAC 3.1-11-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; errata filed Feb 6, 1992, 3:15 p.m.: 15 IR 1027; filed Oct 23, 1992, 12:00 p.m.: 16 IR 849; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 2. 329 IAC 3.1-11.1 IS ADDED TO READ AS FOLLOWS:

Rule 11.1. Spent Lead Acid Batteries

329 IAC 3.1-11.1-1 Applicability

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 1. This rule applies to:
(1) retailers;
(2) wholesalers;
(3) manufacturers;
(4) auto salvage yards;
(5) reclamation facilities;
(6) intermediate storage facilities; and
(7) other storage facilities;
that discard, dispose of, store, or recycle spent lead acid batteries.

(Solid Waste Management Board; 329 IAC 3.1-11.1-1)

329 IAC 3.1-11.1-2 Definitions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-118; IC 13-15-2; IC 13-22-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Battery breaking" or "battery cracking" means decapitating, cutting, or otherwise liberating the contents of a spent lead acid battery. This activity includes the following:
(1) Separating any component of the battery from the other components.
(2) Draining acid from the battery.
(3) Removing plates and groups from the battery.

(c) "Battery breaking facility" means a facility that engages in battery breaking or battery cracking.

(d) "Component" means any of the various materials and parts of a spent lead acid battery, including, but not limited to, the following:

(1) Plates and groups.
(2) Rubber and plastic battery chips.
(3) Acid.
(4) Paper/cellulose material.

(e) "Intermediate storage facility" means the temporary storage of whole spent lead acid batteries in warehouses or other collection facilities, before sending the batteries to a spent lead acid battery reclamation facility. An intermediate storage facility excludes the following:
(1) Retailers.
(2) Wholesalers.
(3) Manufacturers.
(4) Auto salvage yards.

(f) "Intermittent storage" means any storage activity that occurs after reclamation has commenced but before it is completed.

(g) "Large quantity storage facility" means a facility that accumulates more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds or more of spent lead acid batteries.

(h) "Lead acid battery", as defined in IC 13-11-2-118, means a battery that:
(1) contains lead and sulfuric acid; and
(2) has a nominal voltage of at least six (6) volts.

(i) "Partially reclaimed material" means a solid waste material that has been processed but must be processed further before recovery is complete. Partially reclaimed material results from the process of:
(1) battery breaking; and
(2) component separation;
which results in components including partially reclaimed lead bearing material known as plates and groups.

(j) "Plastic battery chips" means post consumer whole components and any pieces thereof that are constructed of plastic and used in a lead acid battery.

(k) "Plates and groups" means the internal components of a lead acid battery that are constructed of lead or lead alloys, or both. Because of the concentration of leachable lead contained in them, plates and groups are:
(1) spent material which is solid waste; and
(2) hazardous waste (waste code D008).

(l) "Reclaimers" means the following:
(1) Battery breaking facilities.
(2) Smelters.

(m) "Reclamation facility" means a facility involved in the recovery of material from wastes.

(n) "Reclamation process" includes both:
(1) battery cracking; and
(2) smelting;
of spent lead acid batteries for the purpose of recovering lead and other components.

(o) "Recycling facility" means a battery breaking facility or a secondary lead smelter.

(p) "Rubber battery chips" means post consumer whole components of batteries and pieces of batteries that are constructed of rubber and used in a lead acid battery.

(q) "Small quantity storage facility" means a facility that does not accumulate more than five thousand (5,000) kilograms or eleven thousand twenty-three (11,023) pounds of spent lead acid batteries.

(r) "Spent lead acid battery", for purposes of this rule, means any lead acid battery that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing, or any lead acid battery being discarded, abandoned, disposed of, or reclaimed.

(s) "Staging" means holding whole spent lead acid batteries in trailers, which have arrived at a battery breaker or secondary lead smelter, or both, until the batteries can be transferred to a permitted storage area or moved into the processing unit.

(t) "Whole spent lead acid battery" means a spent lead acid battery that has not been subjected to battery-breaking operations.

(Solid Waste Management Board; 329 IAC 3.1-11.1-2)

329 IAC 3.1-11.1-3 Standards for retailers, wholesalers, manufacturers, and auto salvage yards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-20-16; IC 13-22-2

Sec. 3. Retailers, wholesalers, manufacturers, and auto salvage yards that store spent lead acid batteries must comply with IC 13-20-16 and the following:

(1) Spent lead acid batteries must be stored in a:
(A) building with a roof; or
(B) covered container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.

(2) Spent lead acid batteries must be stored upright and secured to prevent overturning.

(3) If the spent lead acid battery is not in good condition or begins to leak, the owner or operator of the facility must transfer the battery to a container that is:
(A) in good condition; and
(B) chemically compatible with the contents of the battery.

(4) Spent lead acid batteries must not be retained for more than ninety (90) days.

(5) Any spent lead acid battery being discarded shall be sent to:
(A) a secondary lead smelter authorized by the department;
(B) an intermediate storage location with the intent to deliver to a secondary lead smelter authorized by the department; or
(C) a universal waste handler in accordance with 40 CFR 273.

(Solid Waste Management Board; 329 IAC 3.1-11.1-3)

329 IAC 3.1-11.1-4 Standards for intermediate storage facilities

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 4. Intermediate storage of spent lead acid batteries in warehouses or other collection facilities (excluding retailers, wholesalers, manufacturers, and auto salvage yards) shall comply with the following:

(1) For small quantity storage facilities that do not accumulate more than five thousand (5,000) kilograms of spent lead acid batteries, the following:
(A) If the lead acid battery is not in good condition or begins to leak, the owner must transfer the battery to a container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(B) Batteries must be stored upright and secured to prevent overturning.
(C) Batteries should be stored in a covered building with a roof. If stored outside, batteries must be

stored in a covered container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(D) Batteries may not be stored for more than three hundred sixty-five (365) days.
(E) A spill response plan that includes procedure and types and locations of equipment for cleaning up releases must be maintained on-site.
(F) Any spilled waste and contaminated equipment must be disposed or recycled in accordance with applicable solid waste rules at 329 IAC 10 and 329 IAC 11 or hazardous waste rules in this article.
(2) For large quantity storage facilities that accumulate more than five thousand (5,000) kilograms of spent lead acid batteries, the following:
(A) The storage facility must notify IDEM's commissioner of the location of the storage site.
(B) If the lead acid battery is not in good condition or begins to leak, the owner must transfer the battery to a container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(C) Batteries must be stored upright and secured to prevent overturning.
(D) Batteries should be stored in a building with a roof. If stored outside, batteries must be stored in a covered container that is:
(i) in good condition; and
(ii) chemically compatible with the contents of the battery.
(E) Batteries may not be stored for more than three hundred sixty-five (365) days.
(F) A spill response plan that includes procedure and types and locations of equipment for cleaning up releases must be maintained on-site.
(G) Any spilled waste and contaminated equipment must be disposed or recycled in accordance with applicable solid waste rules at 329 IAC 10 and 329 IAC 11 or hazardous waste rules in this article.

(Solid Waste Management Board; 329 IAC 3.1-11.1-4)

329 IAC 3.1-11.1-5 Sandards for reclaimers

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 5. (a) Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:
(1) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.
(2) All applicable provisions in the following subparts of 40 CFR 264:
(A) Subpart A through Subpart B, excluding 40 CFR 264.13.
(B) Subpart C through Subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72.
(C) Subpart F through Subpart L.
(3) All applicable provisions in the following subparts of 40 CFR 265:
(A) Subpart A through Subpart B, excluding 40 CFR 265.13.
(B) Subpart C through Subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72.
(C) Subpart F through Subpart L.
(4) All applicable provisions in 40 CFR 270 and 40 CFR 124.

(b) Battery breaking facilities that do not recycle the components on-site shall comply with all applicable generator requirements of 40 CFR 262.34 for the components of the battery that are hazardous wastes, unless an exemption pursuant to 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by IDEM.

(c) Trailers of incoming whole spent lead acid batteries may be staged on an asphalt or concrete surface maintained in good condition and shall be processed, or put into storage, within fourteen (14) calendar days of receipt. The following conditions shall be met for staged batteries:
(1) A visual inspection of each load staged for greater than twenty-four (24) hours shall be performed not later than forty-eight (48) hours after receipt. Each visual inspection shall include checking the interior of the trailer from outside the trailer and ensuring that there are no overturned or leaking

batteries. Any problems must be corrected immediately.
(2) Daily inspections of the staging area shall be performed as long as trailers remain in the area. Any indications that a trailer is leaking will require an immediate inspection to determine the source of the leak. If the batteries are the source of the leak, either the entire load shall be processed immediately or the source of the leak must be containerized.
(3) Spills must be addressed per the facility's IDEM approved contingency plan or spill response plan.
(4) Operating records will consist of documentation on inspections conducted under subdivisions (1) and (2).

(d) Loading and unloading areas shall be:
(1) on an asphalt or concrete surface maintained in good condition; and
(2) inspected daily for spills and deterioration.
Cracks or gaps that are observed during daily inspections shall be repaired as soon as possible, weather permitting.

(e) For existing facilities, the following standards for intermittent storage during reclamation must be met for partially reclaimed wastes, unless an exemption under 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by IDEM:
(1) Wastes must be stored inside a completely enclosed structure (that is, with walls and under roof) maintained free of cracks, gaps, corrosion, or other deterioration that could allow hazardous waste to be released.
(2) Wastes must be either:
(A) stored in a container meeting the applicable requirements of 40 CFR 264, Subpart I;
(B) stored on an impervious base (for example, coated concrete) chemically compatible with the waste, and constructed of materials of sufficient strength and thickness to support the waste and any personnel and heavy equipment that operate within the unit, and this base shall be inspected weekly for signs of deterioration and repaired immediately if detected; or
(C) if the base is not impervious, the base shall be inspected daily for cracks or other evidence of deterioration, and repaired within seventy-two (72) hours, if detected.
(3) For units managing free liquids or treated with free liquids, the owner or operator must include a liquid collection and removal system. The concrete base must be sloped to facilitate drainage.
(4) Waste acid and any other liquid wastes from the recycling process shall be either:
(A) sent to an on-site wastewater treatment facility; or
(B) managed in accordance with all applicable hazardous waste rules.
(5) Measures must be taken to prevent tracking of contaminants outside of the building by personnel or equipment. An area must be designated to decontaminate equipment. Any rinsate, if hazardous, must be collected and properly managed according to 40 CFR 262.34. If the rinsate is not hazardous, it must be managed in accordance with applicable solid waste rules at 329 IAC 10.
(6) Measures must be taken to control fugitive dust emissions per 40 CFR 264.1101(c)(1)(iv).

(f) All waste streams generated during the reclamation process identified as hazardous waste pursuant to 40 CFR 261 shall be managed according to 40 CFR 262.34.

(g) New secondary lead smelters or new lead acid battery breaking facilities must obtain a containment building permit in accordance with 40 CFR 264, Subpart DD to store partially reclaimed waste in piles, unless an exemption under 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 is granted by IDEM.

(Solid Waste Management Board; 329 IAC 3.1-11.1-5)

329 IAC 3.1-11.1-6 Transporters

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2

Sec. 6. (a) Facilities that engage in transporting separated components of a spent lead acid battery must comply with 329 IAC 3.1-8.

(b) Facilities that receive and store separated components of spent lead acid batteries that are a hazardous waste as identified in 40 CFR 261 must comply with the manifest requirements of 40 CFR 264, Subpart E as incorporated by reference in 329 IAC 3.1-9-1.

(c) The requirements of 40 CFR 264, Subpart E do not apply to the transportation of whole spent lead acid batteries.

(Solid Waste Management Board; 329 IAC 3.1-11.1-6)

329 IAC 3.1-11.1-7 Closure and corrective action

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-15-2; IC 13-22-2; IC 13-25-5-8.5

Sec. 7. In addition to the closure requirements referenced in 329 IAC 3.1-11-2(3), the following requirements apply:

(1) Permitted facilities are subject to 40 CFR 264, Subpart G (closure and post-closure).

(2) At closure of unpermitted intermittent storage areas, the owner or operator must remove or decontaminate all waste residues, contaminated equipment, structures, and equipment. If soils are contaminated and cannot be removed, the owner or operator must prepare a written plan to close the area in accordance with the department's risk integrated system of closure (RISC) nonrule policy as described in IC 13-25-5-8.5(b)(2). This plan must be approved by the commissioner. In addition, if closure requirements are addressed in the facility's exemption under 329 IAC 3.1-5-4 referencing 40 CFR 260.30 and 40 CFR 260.31 they must follow those requirements contained in the exemption.

(3) Corrective action for solid waste management units may be initiated at any time during the life of the facility.

(Solid Waste Management Board; 329 IAC 3.1-11.1-7)

Notice of Public Hearing

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An html version of this document.